IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Civil First Appeal No.163/1991

Firm Chaini Ram Radheshyam, Katla Aluwalia
Amritsar and Another
...Defendant-Appellants
Versus
Jai Kishan S/o Jivraj
...Plaintiff-Respondent
AND
Ram Gopal S/o Late Shri Radheshyam & Others
...Defendant-Respondents

2. S.B. Civil First Appeal No.164/1991

Firm Chaini Ram Radheshyam, Katla Aluwalia
Amritsar and Another
...Defendant-Appellants
Versus
Shanti Devi W/o Dhanpat Singh Bardia
...Plaintiff-Respondent

Date of Judgment ::: 7th December, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

PRESENCE IN BOTH THE APPEALS:

Shri Bihari Lal Agarwal, with
Shri Amit Gupta, Counsel for defendant-appellants
Shri Sagar Mal Mehta, Sr. Advocate, with
Shri Anil Mehta, Counsel for plaintiff-respondents

//Reportable//

By the Court:-

Heard the learned counsel for the parties.

Both the appeals, filed by the same defendant-appellants, involve common facts and identical question of law, therefore, the same are being disposed of by this common judgment.

Plaintiff-respondent Jai Kishan, in Appeal No.163/1991, filed a Civil Suit No.9/78 (66/77), and plaintiff-respondent Shanti Devi, in Appeal No.164/1991, filed a Civil Suit No.8/78 (65/77), in the trial court against the same defendant-appellants for recovery of a sum of Rs.19656.06p. and Rs.19,503.32p., respectively, towards damages. The suits were filed on or about 15th September 1977, wherein it was pleaded that a written contract (Exhibit-1) was executed in between the parties on 8th August 1974 at Kishangarh for supply of about 25000 meter power-loom-cotton at the rate of Rs.2.25p. per meter, by the plaintiff to the defendants from September 1974 up-to 10th October 1974. The other terms and conditions were also mentioned in Exhibit-1. 17130 meters power-loom-cotton in the case of plaintiff Shanti Devi and 17814 meters in the case of plaintiff Jai Kishan were sent to the defendant-appellants in five installments during the period from 9th September 1974 to 3rd October 1974 at Amritsar to be delivered to defendant and Biltee/Hundees thereof were sent through Bank of Rajasthan, Kishangarh. The defendants did not honour the Hundees and the same were sent back at Kishangarh, which were received by plaintiff Jai Kishan on 16th October 1974 and plaintiff Shanti Devi on 16th October 1974 and 19th October 1974.

It was also pleaded that plaintiffs received a

telegram from defendants on 18th September 1974 repudiating the contract, which, according to the plaintiffs, was wrong and illegal. The plaintiffs thereafter sent a telegram on 31st October 1974 to defendants thus -

> "you have not honoured Hundies and have not taken Bilties of contracted goods from Bank. By your letter dated 22.10.74 you have wrongfully refused taking delivery. Rates have fallen. Selling goods at your risk after three days on 4th Nov 1974. You will be responsible for all losses. Take note".

The plaintiffs thereafter sold the aforesaid Biltee along-with power-loom-cotton in Kishangarh to M/s Naresh Textiles at the current market rate i.e. Re.1.48p. per meter, on 4th November 1974 and suffered a loss as per details given in the plaint. The plaintiff further claimed bank expenses, bank interest and telegram charges etc.

The suit was contested by the defendants by filing a written-statement wherein it was pleaded that the trial court had not territorial jurisdiction to entertain, try and decide the present suit as the whole cause of action arose at Amritsar and even no part cause of action arose within the territory of Ajmer Court. It was also averred that goods were to be sent in one lot and not in installments, therefore, the defendants were fully justified in not accepting the goods sent in installments. It was also averred that the contract was not enforceable and was void as it was a forward-contract and under the

Notification dated 25th January 1955 such forward-contract was prohibited. The plea of limitation was also taken. The interest and other expenses were denied and it was prayed that the suit is liable to be dismissed.

On the basis of pleadings of the parties, the trial court framed eight issues common in both the suits, which are reproduced in the judgment of the trial court.

In support of their case, the plaintiffs examined seven witnesses and produced documentary evidence. The defendants examined three witnesses and also produced documentary evidence.

The learned trial court, after hearing the parties and considering their submissions as well as the record of the trial court, decreed the suit of the plaintiff Shanti Devi for a sum of Rs.19,503.32p. and suit of the plaintiff Jai Kishan for a sum of Rs.19,656.06p. The trial court also awarded costs as well as interest at the rate of 12% per annum from the date of filing of the suits till the date of realization of the decretal amount in both the cases. Being aggrieved with the same the defendant-appellants preferred the present first appeals under Section 96 of the Code of Civil Procedure.

The learned counsel for the appellants argued that the learned trial court committed a serious illegality in entertaining, trying and deciding the present suit at

Kishangarh whereas the suit ought to have been instituted and tried at Amritsar as the whole cause of action in the matter arose at Amritsar. The contract was rightly repudiated as entire cloth was not sent in one lot but it was sent in installments; the contract Exhibit-1 was void in view of Section 23 of the Contract Act as it was a forward-contract, which was prohibited vide Notification dated 25th January 1955 under the provisions of Forward Contracts (Regulations) Act 1952. The rate of interest awarded in the case is excessive, particularly looking to the nature of controversy as the present suits were relating to recovery of amount of damages and not the loan amount.

The learned counsel for the appellants, in support of his contentions, relied upon the following decisions:-

1. Raymon and Co. (India) Private Limited Vs. Khardah Co. Limited – AIR 1960 Calcutta 86;

2. Lotus Oil Company Vs. Calcutta Soap Works – AIR 1962 Calcutta 441;

3. Bhagwandas Goverdhandas Kedia Vs. M/s. Girdharlal Parshottamdas & Company and Others.

The learned counsel for the respondents contended that from the statements of plaintiffs' as well as defendants' witnesses and also from the contract (Exhibit-1) it is clear that the contract was executed at

Kishangarh. The goods were to be sent from the Kishangarh and the amount of it was to be received at Kishangarh, therefore, the whole or at-least part cause of action arose at Kishangarh and the trial court was right in entertaining, trying and deciding the suit at Kishangarh and there is no error in the finding of the trial court in this regard. It is further contended that Section 38 of the Sale of Goods Act was not applicable in the present case as from Exhibit-1, the contract, itself it is clear that goods were to be supplied in the month of September till 10th October 1974, therefore, from the language of the contract (Exhibit-1), coupled with the statements of PW-1 and DW-1, it is clear that goods were to be sent in installments and not in one lot. The defence has been taken only for the purpose of defending the suits otherwise there is no merit in this contention. He also contended that from the terms and conditions of the contract it is clear that it was not a forward-contract and the Notification dated 25th January 1955 was not attracted in the facts and circumstances of the present case. So far as rate of pendente lite and future interest awarded by the trial court is concerned, it is contended that it was a matter of discretion with the trial court. He further submits that the stay applications filed by the appellants in both the cases were dismissed way back in the year 1991 and 1992 and the amount of

interest might have been recovered till now as the decretal amount has already been recovered, therefore, looking to the special circumstances of the present case, this Court should not interfere in the award of interest at the rate of 12% per annum.

I have considered the submissions of the learned counsel for both the parties and examined the impugned judgment as well as record of the trial court in both the cases.

The learned trial court framed eight issues. Issue No.4 relates to the plea regarding jurisdiction of the trial court. The Issue No.5 relates to Sections 37 and 38 of the Sale of Goods Act, 1930. The Issue No.6 is as to whether written contract Exhibit-1 is void contract in view of Section 23 of the Indian Contract Act, 1872.

Exhibit-1, the Contract dated 8th August 1974, makes it clear that it is written on the letter-pad of the plaintiff at Madanganj, Kishangarh. PW-1 Dhanpat Singh, the husband of plaintiff Shanti Devi and another PW-1 Jai Kishan, plaintiff in another suit, in their statements before the trial court, have categorically stated that Exhibit-1 was executed at Kishangarh in presence of Purushottam. The other plaintiff's witnesses also proved that Exhibit-1 was executed at Kishangarh. I have also examined the statements of DW-1 Radheshyam, DW-2 Satya

Narain and DW-3 Om Prakash and, after scrutiny of the entire evidence available on the record, I find that the finding of the trial court in respect of Issue No.4 about territorial jurisdiction of the trial court is legal and fully justified and the said finding does not call for any interference of this Court.

Exhibit-1, the contract dated 8th August 1974, further makes it clear that delivery of goods was to be given in the month of September and up-to 10th October. It further reveals that goods were to be sent by three firms of the plaintiff, namely, Jai Power Loom Factory, Jaipur Power Loom Factory and Bardia Power Loom Factory. The language is so specific and there is no ambiguity in it that goods were to be sent in installments and not in one lot. The period i.e. the month of September and up-to 10th October, makes it clear that the goods were to be sent in installments otherwise there was no need to mention the word i.e. up-to. When goods were to be supplied by three firms of the plaintiffs then the same were to be supplied in installments only. In this connection the statement of DW-1 Radheshyam is very relevant, who, in his cross-examination, specifically admitted that delivery of goods were to be made from September to 10th October, therefore, it leaves no doubt that goods were to be supplied in installments but upper limit to supply the entire goods was

10th October 1974. The five installments of the goods comprising of more than 17000 meters of power- loom-cotton had already been sent before cancellation of the contract and much time was available to the plaintiffs to send the remaining power-loom-cotton as per the contract. The telegram (Exhibit-7) sent by the defendants to the plaintiffs reads as under:

"cancel khadi 16x16 do not dispatch."

It shows that no reason whatsoever has been assigned by the defendants as to why the contract has been repudiated. The plea about Sections 37 and 38 of the Sale of Goods Act and Section 23 of the Contract Act has been taken only for the purpose of contesting the suit and the same appears to be an afterthought plea, otherwise it was not factually correct. I have also examined the finding of the trial court in respect of Issue No.5 relating to plea regarding Sections 37 and 38 of the Sale of Goods Act and I find that the finding of the trial court is absolutely legal and based on evidence available on the record and the same does not call for any interference.

So far as the submission regarding void contract in terms of Section 23 of the Contract Act is concerned, I have examined the contract (Exhibit-1) in the light of the statements of the plaintiffs' as well as the defendants' witnesses and I find that it was not a forward- contract

and the Notification of 1955 was not attracted in the facts and circumstances of the present case. The learned trial court has considered this aspect in detail and I do not find any illegality or perversity in the finding of the trial court in this regard.

I have also considered the case laws referred by the learned counsel for the appellant in support of his contention with regard to Sections 37 and 38 of the Sale of Goods Act and Section 23 of the Contract act, but, after considering the facts and circumstances of those cases and the facts and circumstances of the present case, I find that the said citations are not applicable in the present case.

So far as the last submission of the learned counsel for the appellants regarding award of interest by the trial court at the rate of 12% per annum is concerned, I am satisfied that the learned trial court was justified in awarding the interest at the rate of 12% per annum, which is reasonable in the facts and circumstances of the present case.

In view of the above, I do not find any merit in any of the submissions of learned counsel for the appellants.

Both the appeals, being devoid of merits, are hereby dismissed but without any order as to costs.

A certified copy of this judgment may be placed in the file of connected appeal i.e. S.B. Civil First Appeal No.164/1991.

(Narendra Kumar Jain) J.

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